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# SUPREME COURT OF THE UNITED STATES.

No. 150.—October Term, 1925.

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| Chicago, Indianapolis & Louisville Ry. Co. et al., Appellants, *vs.* United States of America et al. | Appeal from the District Court of the United States for the District of Indiana. |

[March 1, 1926.]

Mr. Justice Brandeis delivered the opinion of the Court.

Four steam railroads whose lines enter Michigan City, Indiana, brought this suit against the United States, in the federal district court for that State, to set aside an order of the Interstate Commerce Commission entered April 2, 1924. The order directed the steam railroads to remove the unjust discrimination which the Commission found was being practiced against an electric railroad, which also entered that city, by refusal to switch its interstate carload traffic and to make arrangements with it for reciprocal switching. *Chicago, Lake Shore & South Bend Ry. Co.* v. *Lake Erie & Western R. R. Co.*, 88 I. C. C. 525. The order was assailed on the grounds that the facts found did not in law sustain the finding of unjust discrimination; that the order deprives the plaintiffs of their property in violation of the due process clause; and that the electric railroad was not shown to be within the class of carriers entitled to relief against discrimination. The Commission and the electric railroad on whose behalf the order was entered intervened in the suit as defendants. The case was heard before three judges on application for a preliminary injunction which was denied without opinion. It is here on direct appeal under the Act of October 22, 1913, c. 32, 38 Stat. 208, 220.

The essential facts are these. The Chicago, Lake Shore & South Bend Railway Company, sometimes called the South Shore, is an electric passenger railroad which is engaged also in the general transportation of freight. *Indiana Passenger Fares, etc.*, 69

I. C. C. 180. Its line extends from South Bend, Indiana, to Kensington, a station within the corporate limits of Chicago. At Michigan City it has physical connection with the Lake Erie and Western—a steam railroad which is a part of the New York Central system. The Lake Erie refused to establish through routes and joint rates to or from points on the South Shore and also refused to establish with it satisfactory interchange switching charges to industries at Michigan City. It had established such switching interchange with the three other steam railroads which enter that city—the Chicago, Indianapolis & Louisville, commonly called the Monon, the Michigan Central and the Pere Marquette. To remove the alleged discrimination, the South Shore brought against the Lake Erie alone the proceeding reported in *Chicago, Lake Shore & South Bend Ry. Co.* v. *Director General*, 58 I. C. C. 647. By the order there entered the Lake Erie was directed to establish such through routes and joint rates with the South Shore; and was also directed to cease and desist from discriminating by refusing to perform reciprocal switching service with it while performing such switching with the three steam railroads named. The Lake Erie elected to remove the discrimination by entering into such reciprocal switching arrangements with the South Shore.

None of the other three steam railroads had been a party to the proceeding against the Lake Erie. None of them had established through routes or joint rates with the South Shore to points on its line. Each of them refused to enter into an arrangement with it for reciprocal switching. But each of the four steam railroads had an arrangement for reciprocal switching with each of the others. Thus the South Shore still remained at a disadvantage in handling traffic at Michigan City. To remove the discrimination so arising a second petition was filed which resulted in the order here assailed. The position of the other steam railroads differed in one respect from the Lake Erie. It alone had a direct physical connection with the South Shore at Michigan City. Cars from the South Shore could not reach either the Michigan Central or the Monon without passing over tracks of the Lake Erie. They could not reach the Pere Marquette without passing over tracks of both the Lake Erie and the Monon.

The South Shore was within the switching district at Michigan City and through routes and arrangements were already in effect by which traffic from the Monon, the Michigan Central and the Pere Marquette would be delivered there to the South Shore as an industry; and on such traffic the switching charges would be absorbed. Compare *Missouri Pacific R. R. Co.* v. *Reynolds-Davis Grocery Co.*, 268 U. S. 366. The refusal of the steam railroads complained of relates to interchange traffic with the South Shore as a carrier for shippers on its line. The Commission found that this refusal constituted a discrimination, because each steam railroad rendered a like service for each of the others. The steam railroads contend that the circumstances and conditions in respect to the steam railroads were not similar, and that, hence, there could not in law be unjust discrimination. But the absence of direct physical connection between the South Shore and the three steam railroads other than the Lake Erie is the basis of the main attack upon the validity of the order.

*First.* The steam railroads contend that, in effect, the order directs them to establish through routes and joint rates, or to allow a common use of terminals; that such extensions of service can legally be made only upon a finding that public necessity and convenience require them, Transportation Act, 1920, c. 91, amending Interstate Commerce Act, § 1, par. 21; § 3, par. 4; § 15, pars. 3 and 4, 41 Stat. 456, 478, 479, 485, 486; and that, without making such a finding, the Commission has, under the guise of a discrimination order, compelled them to extend their service. It is argued that, as a matter of law, a carrier cannot be guilty of unjust discrimination unless it is able by its own act to remove the inequality; that where there is no direct physical connection with the railroad alleged to be discriminated against, and no joint service is being rendered by the three steam railroads with the South Shore, there cannot, in law, be unjust discrimination, because the existing inequality can be removed only by the consent of a third party, the intermediate carrier.

The order does not require the steam railroads to extend any service to the South Shore. It leaves them free to remove the discrimination by any appropriate action. *American Express Co.* v. *Caldwell*, 244 U. S. 617, 624; *United States* v. *Illinois Central*

*R. R. Co.*, 263 U. S. 516, 521. Direct physical connection with the carrier subjected to prejudice is not an essential. *St. Louis Southwestern Ry. Co.* v. *United States*, 245 U. S. 136, 144. Unjust discrimination may exist in law as well as in fact, although the injury is inflicted by a railroad which has no such direct connection. Wherever discrimination is, in fact, practiced, an order to remove it may issue; and the order may extend to every carrier who participates in inflicting the injury. *United States* v. *Pennsylvania R. R. Co.*, 266 U. S. 191, 197-9. There is nothing to the contrary in *Central R. R. Co. of N. J.* v. *United States*, 257 U. S. 247. The relief sought there was denied solely because the Central, although it participated in establishing the through route and joint rate, did not participate in the service which alone was alleged to constitute discrimination. Here each of the steam railroads was an effective instrument of the discrimination complained of.

*Second.* It is contended that the circumstances and conditions under which the interchange switching service was performed by the steam railroads for each other were essentially dissimilar from those under which such service would be performed for the South Shore. As establishing dissimilarity, the steam railroads point to the South Shore's absence of direct physical connection with any of the carriers except the Lake Erie; to the South Shore's relatively limited terminal facilities at Michigan City; to its relatively small number of freight cars; to the relative fewness of industries on its line; to the fact that the steam railroads exchange traffic at many points, while the South Shore will exchange traffic with them only at Michigan City; to the fact that the South Shore will originate relatively little business which can pass to the lines of the steam railroads, while they originate much which may pass to the South Shore. Despite these facts, the Commission found that the circumstances and conditions were similar. The court cannot substitute its judgment for that of the Commission. *United States* v. *New River Co.*, 265 U. S. 533, 542. The alleged lack of reciprocity and the other facts stated do not constitute, as a matter of law, differentiating circumstances which negative discrimination. Compare *Pennsylvania Co.* v. *United States*, 236 U. S. 351, 364; *United States* v. *Illinois Central R. R. Co.*, 263 U. S. 515, 523.

*Third.* It is contended that the order takes the steam railroads' property without due process of law. The argument is that, while in form the order leaves open to them alternatives, no one would seriously urge that they can, as a practical matter, comply with the Commission's order by ceasing to interchange traffic between themselves, as that would be contrary to obvious public interest and necessity; that, therefore, in effect, the order requires them to permit the South Shore to take a part of the business which they are handling adequately; that business now enjoyed by them is their property, and that the order, therefore, amounts to taking their property in violation of the Constitution. Substantially the same objection was made and overruled in *Pennsylvania Co.* v. *United States,* 236 U. S. 351, and *Louisville & Nashville R. R. Co.* v. *United States,* 238 U. S. 1, 20. Compare *Seaboard Air Line Ry. Co.* v. *United States,* 254 U. S. 57; *United States* v. *Illinois Central R. R. Co.,* 263 U. S. 515, 523; *United States* v. *American Ry. Express Co.,* 265 U. S. 425, 437-8.

*Fourth.* It is contended that the effect of the Commission's order is to require the steam railroads to establish the practice of reciprocal switching with the South Shore, and to establish rates and charges covering such switching; that power to issue such an order exists only where the carrier is "engaged in the general business of transporting freight in addition to" its passenger business, as required by § 418 of Transportation Act, 1920, February 28, 1920, c. 91, §§ 418, 421, 41 Stat. 456, 484, 487-8; and that the Commission was without jurisdiction to enter the order because there is not in the record satisfactory evidence that the South Shore was engaged in the general transportation of freight. See *The Chicago Junction Case,* 264 U. S. 258. Since the decision of this case below, it has been held by this Court that the Commission has power to prevent unjust discrimination practiced by an electric railroad against a steam railroad engaged in interstate commerce, even if the electric line is neither operated as part of a steam railway system nor engaged in the general transportation of freight in addition to its passenger and express business. *United States* v. *Village of Hubbard,* 266 U. S. 474. It is insisted, however, that the limitation contained in § 418 applies, because in this case it is the electric line which is seeking relief. The contenton is

groundless. Moreover, the Commission found that the South Shore is also engaged in the general transportation of freight. Its finding is necessarily conclusive as the evidence taken before the Commission was not introduced below. *Louisiana Pine Bluff Ry. Co.* v. *United States*, 257 U. S. 114.

*Affirmed.*

Mr. Justice HOLMES took no part in the decision of this case.

A true copy.

Test:

*Clerk, Supreme Court, U. S.*